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In the Supreme Court of the United States

OCTOBER TERM, 1988

RICHARD H. AUSTIN, Michigan Secretary of State, and FRANK J. KELLEY, Michigan Attorney General,
APPELLANTS,

v.

MICHIGAN STATE CHAMBER OF COMMERCE, a non-profit Michigan Corporation, APPELLEE.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF THE FEDERAL ELECTION COMMISSION AS AMICUS CURIAE IN SUPPORT OF THE APPELLANTS

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INTEREST OF THE AMICUS CURIAE

The Federal Election Commission ("FEC" or "the Commission") is the independent agency established by Congress to administer and "formulate policy with respect to" the Federal Election Campaign Act of 1971, as amended (the "FECA"), *codified* at 2 U.S.C. §§ 431-455. *See* 2 U.S.C. § 437c(b)(1).[1] The Com-

[1] The Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972), was amended by the Federal Elec-

mission is vested with "exclusive jurisdiction" over the administration and civil enforcement of the FECA. 2 U.S.C. § 437c(b)(1). The Commission also promulgates regulations, 2 U.S.C. § 437d(a)(8), and issues advisory opinions applying the FECA to proposed transactions or activities. 2 U.S.C. § 437d (a)(7). The Commission is authorized to appear in litigation regarding the administration and enforcement of the FECA, as well as the Presidential Election Campaign Fund Act, 26 U.S.C. §§ 9001-9013, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9042. *See* 2 U.S.C. § 437d (a)(6); 26 U.S.C. §§ 9010, 9040. This brief is submitted in support of the Appellants pursuant to Supreme Court Rule 36.4.

The FECA generally prohibits any corporation from using its corporate treasury funds to make "a contribution or expenditure in connection with any [federal] election." 2 U.S.C. § 441b(a). However, the FECA permits a corporation to use its corporate treasury funds to administer a separate segregated fund to be used for political purposes. 2 U.S.C. § 441b(b)(2)(C). Separate segregated funds are defined as political committees by the FECA, 2 U.S.C. § 431(4)(B), and like other political committees are subject to recordkeeping and reporting requirements.

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tion Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263, by the Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475, by the Social Security Amendments of 1977, Pub. L. No. 95-216, Title V, Sec. 502, 91 Stat. 1509, 1565, by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980), by the Trademark Clarification Act of 1984, Pub. L. No. 98-620, Title IV, Sec. 402, 98 Stat. 3335, 3357, and by Pub. L. No. 100-352, Sec. 6(a), 102 Stat. 662, 663 (June 27, 1988).

See 2 U.S.C. §§ 432-434. The corporation itself can direct the making of contributions and expenditures from this fund. *See Pipefitters v. United States*, 407 U.S. 385, 413-426 (1972). Contributions to a separate segregated fund may be solicited only from the corporation's stockholders, executive and administrative personnel and their families, and, if a membership corporation, from members. 2 U.S.C. § 441b(b)(4).

The decision of the court of appeals in this case held that Mich. Comp. Laws ("MCL") § 169.254(1), a provision of the Michigan Campaign Finance Act (the "Michigan Act"), modeled on 2 U.S.C. § 441b, is unconstitutional as applied to independent election expenditures by the Michigan State Chamber of Commerce ("State Chamber").[2] The court reached this decision in reliance upon *FEC v. Massachusetts Citizens for Life* ("*MCFL*"), 479 U.S. 238 (1986), a case involving 2 U.S.C. § 441b itself. The Commission has a vital interest in this case because the lower court's decision erroneously expands the scope of this Court's ruling on the constitutionality of the FECA, and will adversely impact the Commission's ability to enforce the FECA.

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[2] Section 54(1) of the Michigan Act prohibits a corporation from making, *inter alia*, independent expenditures "in assistance of, or in opposition to the nomination or election of a candidate" for state office. MCL §§ 169.254(1), 169.206(1). However, it permits a corporation to establish a separate segregated fund, MCL § 169.255(1), and solicit contributions to that fund from a restricted class of individuals including its stockholders, officers, directors, managerial and administrative personnel and their spouses, and, if a membership corporation, from the stockholders, officers, directors and managerial personnel of members. MCL §§ 169.255(2), (3). A separate segregated fund under the Michigan Act is required to report as a political committee or independent committee. MCL §§ 169.208(2), 169.211(2).

STATEMENT OF THE CASE

The State Chamber is a nonprofit Michigan corporation established in 1959 to serve the economic interests of the Michigan business community (J.S. App. 2a-3a, 41a).[3] It does this through a number of activities including, *inter alia*, providing business training and education, distributing newsletters and reports, organizing seminars and conventions, encouraging ethical business practices, lobbying, and making contributions and expenditures in political elections (J.S. App. 22a-23a, 41a-42a). More than 75% of the State Chamber's 8,000 members are business corporations (J.S. App. 3a, 41a). It is funded primarily by annual dues which its corporate and noncorporate members are required to pay (J.S. App. 2a-3a).

In June 1985, the State Chamber decided to place a paid advertisement in the *Grand Rapids Press* in support of a candidate in a primary election for the Michigan House of Representatives (J.S. App. 4a, 42a-43a). Although the State Chamber's separate segregated fund, the Michigan State Chamber of Commerce Political Action Committee, had ample funds to pay for the advertisement in compliance with the Michigan Act,[4] the State Chamber decided it wanted to pay for the advertisement with funds from its corporate treasury instead (J.S. App. 6a-7a).

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[3] "J.S. App. ——" references are to the consecutively numbered pages of the Appendix to the Jurisdictional Statement. "J.A. ——" references are to the pages of the Joint Appendix filed by the parties in this Court.

[4] The State Chamber's separate segregated fund projected having more than $140,000 to spend in the 1986 elections (J.A. 143a).

Anticipating that its proposed expenditure would violate the Michigan Act, the State Chamber brought this action seeking a declaration that section 54(1) was unconstitutional and an injunction against its enforcement (J.S. App. 4a, 43a).

The court of appeals concluded that this case was controlled by this Court's holding in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), that the similar federal prohibition of corporate election expenditures could not constitutionally be applied to certain corporations. The holding in *MCFL* was explicitly limited to corporations having three distinctive characteristics possessed by the corporation in that case: 1) it was formed for the express purpose of promoting political ideas and could not engage in business activities, 2) it had no shareholders or persons financially affiliated with it, and 3) it was not established by a business corporation or union and had a firm policy against accepting money from such entities. 479 U.S. 263-264. The court of appeals acknowledged that the State Chamber was formed to promote the interests of the Michigan business community (J.S. App. 22a), and that more than 75% of its treasury consisted of funds received from its business corporation members (J.S. App. 24a-25a). Nevertheless, it decided that the State Chamber was protected by the *MCFL* decision because the Michigan Act's requirements for reporting independent expenditures ensured that the Chamber's election expenditures from the funds provided by its corporate members would not be "undisclosed" (J.S. App. 25a-26a).

Dissenting from the denial of rehearing *en banc* by the court of appeals, Judge Merritt, joined by three other judges (J.S. App. 38a), stated:

> The panel . . . describes the Chamber as "comprised of about eight thousand voluntary members, approximately *seventy-five percent of whom are corporations* . . . ." Thus, the panel itself—without recognizing it—characterized the Michigan Chamber so as to place it outside the narrow exception carved out by the Supreme Court . . . .
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> [T]he Michigan Chamber of Commerce may now act as a conduit for large sums of money contributed by its corporate members—General Motors, Ford, Chrysler, etc.—in support of the corporations' favorite candidates.

(J.S. App. 35a-36a, 33a) (emphasis in original).

SUMMARY OF ARGUMENT

Section 54(1) of the Michigan Campaign Finance Act, which was modeled on a provision of the Federal Election Campaign Act, 2 U.S.C. § 441b, requires a corporation to finance independent expenditures in state elections from a separate segregated fund made up of voluntary contributions from individuals. In *FEC v. Massachusetts Citizens for Life* ("*MCFL*"), 479 U.S. 238 (1986), this Court determined that section 441b was unconstitutional as applied to some small, informally organized incorporated advocacy groups that might be discouraged from making election expenditures because of the burdens of forming a separate segregated fund. The Michigan State Chamber of Commerce is not such a corporation, for it is a large, sophisticated organization that has for many years operated a separate segregated fund in compliance with the Michigan statute, which has been a potent force in Michigan elections.

The Court also explicitly limited its decision in *MCFL* to corporations that satisfy a three part test that, the Court said, demonstrates that the important governmental purposes underlying the statute are not applicable to their independent election expenditures. The State Chamber cannot satisfy any of the three parts of this test since election expenditures from the State Chamber's general treasury would be financed primarily by dues from the business corporations that make up the bulk of its membership, the State Chamber is dedicated to serving the business interests of its members rather than merely an ideological agenda, and members of the State Chamber have a strong financial disincentive from ceasing to pay dues even if they do not support the Chamber's election activities. For this reason as well the Michigan statute is not unconstitutional as applied to the State Chamber.

Allowing a corporation to make election expenditures from its general treasury in these circumstances would nullify the important limitations this Court placed on its decision in *FEC v. Massachusetts Citizens for Life*, open an avenue through which virtually unlimited amounts of corporate and union money could be diverted to electoral campaigns, and substantially undermine congressionally mandated limitations upon the use of corporate and union wealth to influence federal elections which have been in effect for more than 40 years.

ARGUMENT

THE DECISION OF THE COURT OF APPEALS THAT THE MICHIGAN ACT IS UNCONSTITUTIONAL AS APPLIED TO THE MICHIGAN STATE CHAMBER OF COMMERCE SHOULD BE REVERSED BECAUSE IT CONFLICTS WITH THIS COURT'S DECISION IN *FEC v. MASSACHUSETTS CITIZENS FOR LIFE*, 479 U.S. 238 (1986)

A. Section 54(1) Of The Michigan Campaign Finance Act Does Not Restrict The State Chamber's Political Speech

Like 2 U.S.C. § 441b, upon which it was modeled, section 54(1) of the Michigan Act prohibits corporations from using their treasury funds to make contributions and expenditures in connection with elections, but permits them to make election expenditures and contributions from a separate segregated fund financed by individual contributions solicited specifically for that purpose. Thus, the statute regulates only how such election expenditures are financed and leaves unrestricted the amount, method and content of a separate segregated fund's expenditures for political expression. For almost all corporations, the opportunity for political speech provided by this statutory scheme fully satisfies the requirements of the First Amendment.

In *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), however, a majority of this Court concluded that the administrative and financial burdens of establishing and maintaining a separate segregated fund to finance election expenditures were substantial enough to discourage some small, informal organizations like the one in that case from engaging in political speech at all.

> [S]uch duties require a far more complex and formalized organization than many *small groups* could manage. Restriction of solicitation of contributions to "members" vastly reduces the sources of funding for organizations with either few or no formal members, directly limiting the ability of such organizations to engage in core political speech . . . . Faced with the need to assume a more sophisticated organizational form . . . and to monitor garage sales lest nonmembers take a fancy to the merchandise on display, it would not be surprising if at least some groups decided that the contemplated political activity was simply not worth it.

479 U.S. at 254-255 (emphasis added). For these reasons, the Court concluded that the statute's "practical effect on MCFL in this case is to make engaging in protected speech a severely demanding task." *Id.* at 256.[5]

None of these concerns are applicable to the State Chamber. The State Chamber is a state-wide organization that has been in existence since 1959. Un-

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[5] The plurality opinion also listed among the administrative burdens on MCFL's speech the FECA's requirements that separate segregated funds, like other political committees, "adopt specific accounting procedures" and "file periodic detailed reports . . . ." 479 U.S. at 255. However, only four Justices joined in this portion of the opinion, and Justice O'Connor filed a separate concurring opinion to make clear her view that "the significant burden on MCFL in this case comes not from the disclosure requirements that it must satisfy, but from the additional organizational restraints imposed upon it by the Act." *Id.* at 266. Accordingly, a majority of the Court rejected the suggestion in the plurality opinion that the FECA's recordkeeping and disclosure requirements could be a cognizable burden on MCFL's First Amendment rights.

like MCFL, which was funded by voluntary donations, the State Chamber has a steady source of financial support from the dues which its 8,000 members are required to pay to obtain the many benefits of membership. More importantly, the State Chamber has operated a potent separate segregated fund since 1977 (J.S. App. 42a) and there is no evidence that it has been unable to publicize its political views adequately through the political expenditures it has made from that fund in every election since 1977.[6] To the contrary, the State Chamber has been highly successful in the electoral activities financed through its separate segregated fund, and most of the candidates it has supported in recent years have won (J.S. App. 66a-67a; J.A. 162a-163a). Indeed, the State Chamber's success and expertise in operating a separate segregated fund is so well recognized that other corporations and chambers of commerce have turned to it for assistance and instruction in how to form and operate separate segregated funds (J.A. 158a-161a). It even sponsors seminars for candidates on campaign management and ways to get elected to public office (J.A. 160a-161a).

In short, in contrast to MCFL, the State Chamber is a large, sophisticated corporation which has *already* adopted all of the organizational forms required to finance its independent expenditures successfully through a separate segregated fund. Thus, the State Chamber is not the kind of corporation whose political speech could be inhibited because of its "inability to form" a separate segregated fund. *FEC v. Massachusetts Citizens for Life*, 479 U.S. at 255 n.8. This alone is sufficient reason to conclude that the First Amendment is not violated by requiring the State Chamber to finance its independent election expenditures from its separate segregated fund.

[6] The State Chamber has an eligible class of at least 50,000 individuals from which it can solicit contributions to its separate segregated fund under the Michigan Act (J.A. 156a-157a) and it has been quite successful in doing so. During the 1983-84 election cycle, the separate segregated fund raised more than $102,000 and it projected having more than $140,000 to spend in the 1986 primary and general elections (J.A. 143a, 162a).

B. Compelling State Interests Are Served By Application Of Section 54(1) To The State Chamber

Even if section 54(1) were found to burden indirectly the State Chamber's ability to make election expenditures it is well settled that "'[n]either the right to associate nor the right to participate in political activities is absolute' . . . [e]ven a '"significant interference" with protected rights of political association' may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms." *Buckley v. Valeo*, 424 U.S. 1, 25 (1976), *quoting CSC v. Letter Carriers*, 413 U.S. 548, 567 (1973) and *Cousins v. Wigoda*, 419 U.S. 477, 488 (1975).

This Court has already confirmed that section 441b's regulation of election expenditures by most corporations serves the substantial governmental interest in maintaining the integrity of candidate elections. *FEC v. Massachusetts Citizens for Life*, 479 U.S. at 256-259. Reaffirming the need to curb the use in elections of "the substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization," which it

had already found compelling in *FEC v. National Right to Work Committee*, 459 U.S. 197, 207 (1982), the Court explained in *MCFL* that "the corrosive influence of concentrated corporate wealth" could threaten "the integrity of the marketplace of political ideas." 479 U.S. at 257.

> Direct corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace . . . . The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.

FEC v. Massachusetts Citizens for Life, 479 U.S. at 257-258. By requiring corporations to finance their spending from separate segregated funds made up of voluntary individual contributions for political purposes, the Court said, "§ 441b seeks to prevent this threat to the political marketplace," for "[t]he resources available to *this* fund, as opposed to the corporate treasury, in fact reflect popular support for the political positions of the committee." *Id.* at 258 (emphasis in original).

The Court majority ultimately found that 2 U.S C. § 441b could not constitutionally be applied to MCFL, not because the purposes behind section 441b were not sufficiently compelling, but because "the concerns underlying the regulation of corporate political activity are simply absent with regard to MCFL." *FEC v. Massachusetts Citizens for Life*, 479 U.S. at 263. Observing that "the class of organizations affected by our holding today" may be "small," the Court carefully set out three characteristics of MCFL that

it specified as "essential to our holding that it may not constitutionally be bound by § 441b's restriction on independent spending." *Id.* at 263-264. These were that MCFL: 1) was formed for the express purpose of promoting political ideas and could not engage in business activities, 2) had no shareholders or persons financially affiliated with it, and 3) was not established by a business corporation and had a firm policy against accepting money from such entities. 479 U.S. at 264. A corporation's inability to show it satisfies any one of these three "essential" criteria would be sufficient to take it out of the narrow class of corporations covered by *MCFL*. 479 U.S. at 264 n.13. As we show below, however, the State Chamber fails to meet any of them. Thus, the compelling purposes supporting the statute are fully applicable to the State Chamber.

The Court found the first criterion—that the corporation was formed for the express purpose of promoting political ideas and cannot engage in business activities—essential to its holding because it "ensures that political resources reflect political support." 479 U.S. at 264. *See also id.* at 259. ("The resources [MCFL] has available are not a function of its success in the economic marketplace, but its popularity in the political marketplace"). Rather than merely advocating political ideas, however, the State Chamber's activities are primarily designed to serve the commercial interests of its members, both by promoting legislative actions that would make Michigan businesses more profitable and by sponsoring seminars, publishing newsletters and directories, and distributing data to assist its members in operating more successful businesses (J.A. 42a; J.S. App. 22a-23a, 41a-42a). Moreover, far from being unable to engage in business activities itself, the State Cham-

ber derives income from the sale of at least some of these services to the public (J.A. 40a-41a), and even has a profit making subsidiary (J.A. 137a). In short, in contrast to MCFL, the State Chamber's business is not promoting ideas; its business is promoting business.

This Court found the second criterion—that MCFL had no shareholders or persons financially affiliated with it—essential to its holding because it ensures "that persons connected with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity." 479 U.S. at 264. The State Chamber provides services to its members that assist them in increasing business profits and in facilitating business contacts and employment opportunities (J.A. 41a, 42a), which are valuable commercial benefits. *Cf. Roberts v. United States Jaycees*, 468 U.S. 609, 625-626 (1984). Other benefits such as group insurance and publications at reduced membership rates (J.A. 41a, 42a) are of direct financial value to members. Indeed, the prestige in the business community of being a member of the Chamber of Commerce is itself undoubtedly a valuable commercial asset, not unlike membership in the local bar association for a lawyer. These benefits deriving from membership in the State Chamber clearly represent a powerful financial incentive for members to continue to pay dues to the Chamber even if they don't agree with its stand on political issues. Thus, unlike MCFL, the resources in the State Chamber's treasury reflect in large part its ability to provide valuable benefits to its members, not merely popular support of its position on political issues.

This Court found the third criterion—that MCFL had not been established by a business corporation

or labor union and had a firm policy against accepting contributions from such entities—essential to its holding because it "prevents such corporations from serving as conduits for the type of direct spending that creates a threat to the political marketplace." *FEC v. Massachusetts Citizens for Life*, 479 U.S. at 264. This criterion reflects the intention expressed by Congress that business associations not be able to convert their corporate members' dues into political expenditures that those corporations themselves would be prohibited from making.[7]

The State Chamber clearly fails to satisfy this criterion as well. The State Chamber not only accepts money from business corporations but most of its membership consists of corporations. Indeed, the court of appeals acknowledged that 75% of the State Chamber's treasury funds come from business corporations (J.S. App. 25a). Moreover, the State

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[7] During the Senate debates on the original statutory ban on corporate election expenditures, Senator Taft repeatedly confirmed this intention.

> Of course, if the Chamber of Commerce were a corporation, as I think it is, it would be clearly illegal. In any event, so long as the money comes from corporations, and with their knowledge, I think it would be clearly illegal anyway, and they would be participating as corporations in spending for political purposes.
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> [I]f an association of manufacturers accepts contributions from corporations and others that violate the laws by making contributions for political purposes, I think it will be an accessory with those corporations and will be liable under the act.

93 Cong. Rec. 6438, 6447 (1947), *reprinted in* II NLRB, *Legislative History of the Labor Management Relations Act, 1947* at 1531, 1548 (1948).

Chamber appears to have been established at least in part by business corporations (J.S. App. 20a), and its primary purpose of existence is to serve the interests of business (J.S. App. 41a). Thus, the State Chamber represents precisely the sort of conduit for business corporation funds that this Court was at pains to exclude from its ruling in *MCFL*. This Court's opinion in *MCFL* makes clear that corporations like the State Chamber that accept financial support from business corporations fall outside the small class protected by that decision.[8]

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[8] The Commission has construed this Court's decision in *MCFL* to mean what it says—that corporations that are willing to accept financial support from corporations or unions are not within the small class protected by that decision. *See* FEC Advisory Opinion 1987-7, 1 Fed. Election Camp. Fin. Guide [CCH] ¶ 5889 (April 6, 1987). Nevertheless, corporations that accept corporate or union financing have persisted in litigating their entitlement to rely upon that decision. In addition to the instant case, five nonprofit corporations that admit having accepted some funding from business corporations or unions have claimed the protection of the *MCFL* rule in litigation against the Commission. In *United States Defense Committee v. FEC*, No. 84-CV-450 (N.D.N.Y. April 27, 1988), *vacated on other grounds*, 861 F.2d 765 (2d Cir. 1988), the district court found that the corporation was not entitled to rely on *MCFL* because it admitted accepting financial support from business corporations, but the court of appeals resolved the case without reaching that issue. (A copy of the district court's opinion was attached to the Commission's brief in support of the Jurisdictional Statement in this case.) *FEC v. National Organization for Women*, —— F. Supp. —— (D.D.C. 1989), and *Maine Right to Life Committee v. FEC*, 708 F. Supp. 9 (D.Me. 1989), were decided by the district courts without reaching this issue. *FEC v. National Rifle Association*, No. 85-1018 (D.D.C. filed March 29, 1985), and *FEC v. Survival Education Fund, Inc.*, No. 89-CIV-0347 (S.D.N.Y. filed Jan. 17, 1989), are still pending before the district courts. Dozens of other nonprofit corporations have

The appellate court's suggestion (J.S. App. 25a-26a) that the Michigan Act's reporting requirements satisfy this concern is simply wrong. In *FEC v. Massachusetts Citizens for Life*, 479 U.S. at 262, this Court discussed at length the federal statute's comparable requirements for reporting independent expenditures, yet it still found MCFL's policy against accepting funds from business corporations to be essential to its holding. Requiring the State Chamber to report its election expenditures would do nothing to prevent it from *acting* as a conduit for corporate funds, because money the State Chamber receives from its corporate members would still be used to fund the expenditures. *Cf. United Steelworkers of America v. Sadlowski*, 457 U.S. 102, 118-119 (1982). It was MCFL's clear inability to *act* as a conduit because it would accept no corporate funds that this Court found crucial to its conclusion that the FECA's purposes were inapplicable.[9]

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also raised this issue in proceedings currently before the Commission that are still subject to the confidentiality requirements of 2 U.S.C. §§ 437g(a)(4)(B), 437g(a)(12).

[9] This Court found the governmental interest in disclosure of the source of funds spent on election advocacy to be inapplicable in *MCFL* because 2 U.S.C. § 434(c) requires reporting of the identities of all those persons who make contributions to the corporation in excess of $200 "who request that the money be used for independent expenditures." *FEC v. Massachusetts Citizens for Life*, 479 U.S. at 262. The State Chamber represents a disclosure problem the Court did not address—a corporation whose election expenditures come from a treasury made up in part of funds from business corporations who have *not* specified that their contributions be used for election expenditures. Such an organization would have *no* contributions at all to report under 2 U.S.C. § 434(c),

In sum, the State Chamber cannot satisfy either part of this Court's decision in *FEC v. Massachusetts Citizens For Life*, 479 U.S. 238 (1986). The Michigan Act does not burden the State Chamber's ability to engage in political speech in the manner found in *MCFL*, and even if it did, the State Chamber cannot satisfy any of the three prongs of the Court's test for demonstrating that the important governmental interests behind the statute are inapplicable. If the State Chamber has a constitutional right to make election expenditures from its corporate treasury, it is difficult to imagine why virtually any trade association or other nonprofit group established by business corporations or unions would not also be able to spend any funds received from corporate or union members to affect candidate elections. Such a result would nullify the explicit limitations this Court placed upon its decision in *MCFL*, open an avenue through which virtually unlimited amounts of corporate and union money could be diverted to electoral campaigns, and thus substantially undermine congressionally mandated limitations upon the use of corporate and union wealth to influence the outcome of federal elections which have been in effect for more than 40 years. Therefore, the decision of the court of appeals should be reversed.

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even though its business corporation supporters are all fully aware that they are helping to finance election expenditures to benefit their business interests. Requiring corporations to make election expenditures only from a separate segregated fund made up exclusively of contributions that are earmarked for election spending ensures that the sources of the funds spent by such a corporation on election advocacy are fully reported.

CONCLUSION

For the foregoing reasons, the decision of the court of appeals that MCL § 169.254(1) is unconstitutional as applied to the Michigan State Chamber of Commerce should be reversed.

Respectfully submitted,

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